

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1800 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA sd/-

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
No
 2. To be referred to the Reporter or not? Yes :
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
No
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
No
 5. Whether it is to be circulated to the Civil Judge? No :

BRAHMANAND LAYAKRAM

Versus

SHAH NATWARLAL HARAKHLAL

Appearance:

MR DD VYAS for Petitioner

MR HARIN P. RAVAL FOR MR. PM RAVAL for Respondent No. 1

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 25/02/2000

ORAL JUDGEMENT

1. This is tenant's revision under Section 29(2) of the Bombay Rent Act (for short "the Act") against the concurrent Judgments and Decrees of the trial Court and the Appellate Court directing dispossession of the revisionist from the disputed accommodation and also granting decree for arrears of rent, etc.

2. The facts giving rise to this revision are shortly, as under :

The disputed accommodation was let out to the

revisionist on monthly rent of Rs.25/-. The Rent from 1.11.1970 was not paid by the revisionist. Thus, upto 30.4.1976 more than six months rent remained due from the revisionist. Notice of demand was sent on 10.5.1976 which was served on the revisionist, but he failed to pay the rent. Allegation of nuisance was also made against the revisionist that he used to quarrel with his neighbours. Thus, on grounds of arrears of rent, nuisance and annoyance suit for eviction was filed against the revisionist.

3. The revisionist appeared in the trial Court and after seeking ten adjournments filed Written Statement on 12.2.1980. He denied the allegation of nuisance and causing annoyance to the neighbours. He also denied that any amount was due from him. He disputed the correctness and reasonableness of the monthly rent and thus raised dispute of standard rent which, according to him, could not exceed Rs.5/- p.m. Pleading his readiness and willingness to pay the rent he pleaded that the suit is liable to be dismissed.

4. The trial court framed issues before the written statement was filed by the revisionist and added one more issue regarding standard rent after the written statement was filed. In the trial Court the revisionist failed to adduce any evidence in support of his defence. The trial Court in the Judgment deleted issue No.4 by giving some findings regarding standard rent and ultimately found that the revisionist was liable to be evicted under Section 12(3)(b) of the Act. Feeling aggrieved an Appeal was preferred by the tenant revisionist which was also dismissed hence this revisionist.

5. Having heard the learned Counsel for the parties and examining the two judgments of the trial Court and the lower Appellate Court the points which have been raised by Shri D.D.Vyas, learned Counsel for the revisionist can be considered and decided.

6. The first contention of Shri Vyas has been that the revisionist was not given adequate opportunity of hearing and producing evidence in his defence which has resulted in miscarriage of justice. It is admitted fact that the defendant did not adduce any evidence in support of his case. The conduct of the defendant - revisionist was fully appreciated by the two Courts below. The trial Court observed in Para : 8 of its judgment and the suit was filed on 23.6.1976, but no written statement was filed by the defendant after service of summons. He appeared at a late stage and after seeking adjournment

for ten times filed his written statement on 4.2.1980. Thus, after seeking ten adjournments the revisionist filed his written statement. The trial Court further found from the record that the defendant revisionist intentionally wanted to misuse the provisions of the Act and delay the disposal of the Suit. According to the trial Court issues were framed on 8.5.1978. The lower Appellate Court observed that the plaintiff's evidence was closed on 22.3.1984 and thereafter number of adjournments were sought by the defendant - revisionist on one ground or the other including his sickness and disturbance in Punjab where the revisionist had gone for some work. The dates of adjournments are mentioned in the Judgment of the Lower appellate Court as 11.4.1983, 23.6.1983, 25.7.1983, 9.8.1983. Thereafter application for adjournment Ex.75 on ground of sickness of the defendant was rejected through detailed order, but on the same day another application for time to file revision was moved before the trial Court which was rejected. Attempt was also made to get the defendant examined on commission alleging his sickness. On these facts the lower Appellate Court was justified in holding that it cannot be said that the defendant had no ample opportunity to appear before the trial Court and to give his evidence. The Lower Appellate Court further observed that on the other hand it transpires that for one reason or the other the defendant's Advocate had tried to seek repeated adjournments to which the learned trial Judge had initially granted, but at last rejected the said application for further time. As such in view of these factual observations it cannot be said that the defendant was not given reasonable opportunity to lead evidence in his defence. This point urged by Shri Vyas does not appear to be convincing for interference in this revision.

7. The next contention of Shri Vyas has been that issue No.4 regarding dispute of standard rent was deleted by the trial Court which has resulted in miscarriage of justice. He also pointed out that even if the dispute of standard rent was settled earlier under a compromise between the parties the revisionist could raise the said dispute subsequently and the plea of bar of resjudicata will not be attracted.

8. So far as the first plea under second point is concerned, after going through the Judgment of the trial Court I find that there is discussion by the trial Court under Issue No.4 and in the concluding portion the trial Court found that because the defendant concealed material fact for fixation of standard rent earlier and because

this concealment was intentional and malafide, Issue No.4 did not arise and was deleted. Conclusion of issue No.4 may not be happily worded but Para : 6 of the Judgment under Issue No.6 clearly shows that the trial Court considered that earlier application for fixation of standard rent was moved which was decided under compromise between the parties. This was admitted in cross examination of the plaintiff. The dispute regarding standard rent was raised much earlier in the application No. was 26/67. If the standard rent dispute was settled in terms of compromise between the parties and unless coercion, suppression of fact, malafide, etc. was alleged and proved, the parties were bound by the earlier compromise. The contention raised to the contrary by Shri Vyas cannot be accepted. He has relied upon two cases in support of his contention that the plea of bar of resjudicata is not attracted in such cases.

9. One is Shri Tran Devadi Mandir Trust & ors. v/s. Dilipkumar Babulal Shah & ors., reported 1984 GLH 259. This case is distinguishable on facts. Here it was clearly laid down that if the standard rent was fixed on the basis of consent term which is unlawful and tainted with fraud, no such plea can be raised. Principle of estoppel did not apply to cases where consent was unlawful and was not free and valid. In the case before me nothing has been argued that the consent term was unlawful or it was tainted with fraud, coercion, illegality, etc.

The other case relied upon by Shri Vyas is M/s. Abdulgani & Co. v/s. Gulam Hussain Mohmadbhai, reported in 1979 (20) GLR 827. In this case provisions of Section 11 of the Code of Civil Procedure were considered vis-a-vis consent decree in an application for fixation of standard rent. It was observed that a consent decree does not operate as res judicata because there is no adjudication by the Court where Decree is passed on the basis of consent or compromise. If the Court does not decide anything nor can it be said that a decision of the Court was implicit in it, such decision cannot be termed as res judicata under Section 11 C.P.C. in subsequent proceeding. It was further held that a consent decree fixing the standard rent u/s. 11 of the Bombay Rent Act could not operate as res judicata since it decides nothing. It was further held that, however, estoppel must be specifically pleaded to challenge it. Consequently this case is also distinguishable. If consent decree based on an application for fixation of standard rent can not operate as resjudicata strictly within the meaning of Section 11 C.P.C. , such consent

decree can be challenged only by specific pleading on estoppel. Nothing has been urged that the plea of estoppel was raised in the written statement of the defendant revisionist. Consequently if the trial Court believed the consent terms of fixation of standard rent at Rs.25/- p.m. it committed no illegality. Likewise the Appellate Court also committed no illegality in confirming the aforesaid findings of the trial Court.

10. The last contention of Shri Vyas has been that the Decree for eviction under Sec. 12(3)(b) of the Act was wrongly granted by the two Courts below. I do not find force in this contention also for obvious reason that since dispute of a standard rent was raised by the tenant the decree for eviction could not be passed under Section 12(3)(a) of the Act. The question is whether the Decree for eviction could be passed u/s. 12(3)(b) of the Act or not. On this point the trial Court found that the tenant had failed to deposit the entire arrears of rent on the first date of hearing and further failed to deposit the rent in the trial Court regularly. A controversy was raised in the trial Court as to what should be the first date of hearing in this case and this controversy was also raised in Appeal. It is clear from the evidence on record that issues were framed on 8.5.1978. On that date written statement was not filed by the defendant revisionist. He filed written statement subsequently and issue No.4 was framed on 8.9.1980. Keeping in view these two dates controversy was raised from the side of the tenant that the first date of hearing will be 8.5.1978 and not 8.7.1980. The first date of hearing is the date on which the Court applies its mind towards controversy involved in the case. Since the written statement was not filed the trial Court applied its mind to the controversy involved in the case for the first time on 8.5.1978 and this should be treated as first date of hearing. Addition of issue No.4 on 8.9.1980 could not therefore postpone the first date of hearing. The trial Court further found that issues were framed on 8.5.1978 in the knowledge of the Advocate of the defendant. The defendant did not file any written statement prior to framing of issues. Thus, the first date of hearing will be 8.5.1978. The trial Court further observed that only Rs.2750/- were deposited by the defendant along with written statement on 4.2.1980. This does not cover the entire arrears of rent. The tenant also failed to deposit in the trial Court as well as in the Appellate Court monthly rent regularly. Consequently the tenant was not entitled to the benefit under Sec. 12(3)(b) of the Act and decree for eviction on these facts was rightly passed by the trial Court

which was rightly confirmed by the Appellate Court. There is no dispute regarding arrears of rent. Consequently the decree of arrears of rent also requires no interference.

11. Shri Raval for the respondent has rightly drawn my attention to the conduct of the revisionist in this court. He urged that interim stay was obtained by the revisionist on 6.12.1984 and till date neither any amount has been deposited nor usual undertaking has been given by the revisionist.

12. Considering all the facts and circumstances of the case I do not find any merit in this Revision which is hereby dismissed with no order as to costs.

sd/-

Date : 25th February 2000 (D. C. Srivastava, J.)

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